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LAW ENFORCEMENT

HON. JOHN J. MURPHY

Tenement House Commissioner, New York City

IF the laws were self-enacting how many problems of government might be simplified! Whenever we are confronted with a condition of things which we do not like, we rise up and demand that there be a law enacted to prevent or require something, and having secured the law we conclude that we have accomplished something. Of course, I attribute this mental attitude to the general public and not to the specially trained intelligences belonging to the group which I am now addressing. Yet it is a very customary attitude. When the law is passed the work of enforcement begins, and it is as to the methods actually used in enforcing our law that I am supposed to address you.

To begin with, as soon as the law is passed everybody is supposed to be aware of it and to know what it contains and what it means. The mere statement of this supposition is enough to convince one of its absurdity. The point has been well taken that the old theory that every one was presumed to know the law applied only to the common law and was based on the assumption that the common law being the product of the general opinion of the community in which it operated might reasonably be presumed to be within everybody's knowledge. No such presumption can be established for statute law; but in order that laws may be enforced, and people punished for breaking them, we have to continue the old assumption, because strangely enough our sense of justice might conflict with the idea of punishing a man for violation of a rule which he did not know. Therefore we feel justified in agreeing to a purely artificial hypothesis that he does know. The first step, therefore, towards law enforcement ought to be, and is in this department, the notification to the owner of the property affected as to the points on which he is delinquent.

At the outset this work divides itself into two classes of notices, one furnished by the New-Building Bureau and the other by the Old-Building Bureau. The New-Building Bureau notifies owners of proposed buildings as to the points at which their plans vary from the requirements of the law and from the rules and regulations of the Tenement House Department. During the process of its erection every new building intended for tenement purposes is kept under constant supervision, and every substantial deviation from plans filed is made the basis of a violation. Wherever such violation is of a grave character the owner and builder are notified that if the fault is not remedied promptly the department will revoke the permit, thus compelling a cessation of the work on the whole building. In passing it may be stated that the number of such orders, while considerable in the past, is now very small because the builders have been trained to a better understanding of the law and a knowledge that the department will not be trifled with in such matters. In a sense, therefore, the New-Building Bureau is an adviser to owners and builders rather than an agent of repression. Of course, if the owner or builder will not be guided, then the repression follows, but ninety per cent of our work to-day is advisory and instructive rather than repressive.

The Old-Building Bureau, on the other hand, warns the owners as to violations of law in buildings already constructed. Information as to these violations comes to us in two ways: One, through the regular cycle inspections made by inspectors of the department four times a year of all of the cheaper grades of tenements in the city, and the other, from complaints received. Complaints reach us by letter, by personal visits and by telephone. We do not insist upon complaints being signed. An investigation of the complaints forwarded to us indicates that while from ten to fifteen per cent of them are without adequate foundation, the result of spite or malice, eighty-five per cent relate to matters concerning which interference either by the Tenement House Department or by some other department of the city government is entirely justified.

When the complaint has been received from our inspector or from an unofficial complainant, and when the cause of com-

plaint has been verified, a notice is sent to the owner informing him of the fact that the illegal condition exists, and that if he will remove same within ten days of the receipt of the notice, no violation will be filed against the property. The basis of this procedure, as distinguished from the summary filing of a violation when it is reported to exist, is that the owner who is charged with such offense may have an opportunity to protest if he believes the complaint not justifiable, and that he may have the opportunity to remove it without having the matter take the form of a definite violation.

If no action by the owner follows the sending of such a notice after a reasonable time, his attention is again called to the situation existing before the matter is forwarded to the office of the corporation counsel for legal action. After the case reaches the corporation counsel the usual "lawyer's letter" is sent by the corporation counsel informing the delinquent that if he does not comply with the orders of the department promptly, legal proceedings will be taken.

The legal proceedings provided in the law are of several kinds. When conditions exist which do not seriously or immediately threaten the safety of the residents of the building, recourse is had to police-court proceedings, as in the case of any ordinary misdemeanor, with a purpose of having the delinquent fined. This method is found to be effective in a very large number of minor cases. It has been the practise of the department where a disposition to comply is shown, not to insist upon the exaction of a penalty. I was inclined at the first of the year (and am still) to consider that whatever value this policy might have had in the past, because of the unfamiliarity of owners with the law, leniency was a mistake, because owners have found it possible to postpone action sometimes for years and at the end obey the orders of the department without any more cost to themselves than if they had complied promptly in the beginning. The corporation counsel has therefore been directed that in future he shall not agree to the remission of any penalty in cases which have been sent to him for prosecution. Of course if in the trial of the case it appears that for any reason an injustice would be done by the

exaction of the penalty, the commissioner exercises his authority to accept the remission.

In cases where structural alterations are called for, which do not immediately or seriously menace the health of the occupants of the building, we have the right to proceed in the civil courts for the collection of the penalty of \$250 and \$10 per diem for the period during which the violation shall be shown to exist. The law gives the judges very little discretion in these matters. If the proof of the existence of the violation is complete, they have no alternative but to impose the fine provided in the law. Of course such cases are frequently appealed from the lower to higher courts and in this way actual enforcement is delayed, but the number of contests grows steadily less.

In serious cases the most effective weapon of the department is the vacation proceeding. Wherever a condition exists which justifies such action by the inspector in charge of the case, he certifies in an affidavit that he believes that condition to constitute a menace to life and health. We may then order the premises vacated. It is a remedy to which we resort only in cases of extremity. It is a sword which cuts both ways, because while it inflicts upon delinquent owners the loss of rental, it is very often a serious hardship to the innocent tenants who are compelled to move with what is often short notice. We find it, however, necessary in some instances to exercise this power, and there are a number of houses in the city to-day vacant because of the refusal of the department to allow them to be occupied and the refusal of the owners to make the necessary repairs.

A power which is in theory conferred upon the department but one which has not been exercised for lack of proper financial arrangements, is that of abating nuisances wherever they may exist and charging the property with the cost of such abatement. The language of the charter by which this power is conferred is broad enough to enable us to carry out any order issued by the department, but the cost of such work has not been in the past a superior lien and in the absence of this provision this exercise has been regarded as unwise. There is a bill now before the legislature which would make expense in-

curred for this purpose a lien superior to others except for taxes and assessments. If this measure passes it will greatly strengthen the power of the department for future work.

I may summarize the situation, however, by saying that in the final analysis the most effective work for law enforcement has been through constant urging by the department and the explanation to owners and others of the necessity for the proposed changes rather than through the actual operation of the law. This is not to say that our expostulations would have been successful had not the power of the law existed which would compel compliance, but that the great mass of improvements has been made without putting the matter to legal test. Had any concerted opposition been made all the work of improvement might have been long postponed.

My experience since coming into the department has been that public interest, which was divided in the beginning, is now substantially unanimous as to the desirability of the law and as to the substantial benefits which it has conferred upon the city of New York.